

114TH CONGRESS  
2D SESSION

# S. 290

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## AN ACT

To amend title 38, United States Code, to improve the accountability of employees of the Department of Veterans Affairs, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Increasing the Depart-  
3 ment of Veterans Affairs Accountability to Veterans Act  
4 of 2016”.

5 **SEC. 2. REDUCTION OF BENEFITS FOR SENIOR EXECU-**  
6 **TIVES AND CERTAIN HEALTH CARE EMPLOY-**  
7 **EES OF DEPARTMENT OF VETERANS AFFAIRS**  
8 **CONVICTED OF A FELONY.**

9       (a) IN GENERAL.—Chapter 7 of title 38, United  
10 States Code, is amended by adding at the end the fol-  
11 lowing new section:

12 **“§ 715. Senior executives and section 7401(1) employ-**  
13 **ees: reduction of benefits of individuals**  
14 **convicted of a felony**

15       “(a) REDUCTION OF ANNUITY FOR REMOVED INDIV-  
16 IDUAL.—The covered service of an individual removed  
17 from a covered position at the Department by the Sec-  
18 retary for performance or misconduct shall not be taken  
19 into account for purposes of calculating an annuity with  
20 respect to such individual under chapter 83 or chapter 84  
21 of title 5, if the individual is convicted of a felony (and  
22 the conviction is final) that was related, as determined by  
23 the Director of the Office of Personnel Management, to  
24 the individual’s conduct or performance while employed in  
25 such covered position.

1       “(b) REDUCTION OF ANNUITY FOR RETIRED INDI-  
2 VIDUAL.—(1) The Secretary may order that the covered  
3 service of an individual who is subject to a removal or  
4 transfer from a covered position at the Department by the  
5 Secretary for performance or misconduct but who leaves  
6 employment at the Department prior to the issuance of  
7 a final decision with respect to such removal or transfer  
8 shall not be taken into account for purposes of calculating  
9 an annuity with respect to such individual under chapter  
10 83 or chapter 84 of title 5, if the individual is convicted  
11 of a felony (and the conviction is final) that was related,  
12 as determined by the Director of the Office of Personnel  
13 Management, to the individual’s performance while em-  
14 ployed in such covered position.

15       “(2) The Secretary shall make such an order not  
16 later than 7 days after the date on which such individual  
17 is convicted of such felony.

18       “(3) Not later than 30 days after the Secretary issues  
19 any order with respect to an individual under paragraph  
20 (1), the Director of the Office of Personnel Management  
21 shall recalculate the annuity of the individual.

22       “(c) LUMP-SUM ANNUITY CREDIT.—Any individual  
23 with respect to whom an annuity is reduced under sub-  
24 section (a) or (b) shall be entitled to be paid so much of

1 such individual's lump-sum credit as is attributable to the  
2 period of covered service.

3 “(d) REVIEW OF REDUCTION OF ANNUITY.—Any in-  
4 dividual whose annuity is reduced under subsection (a) or  
5 (b) may appeal the reduction to the Director of the Office  
6 of Personnel Management.

7 “(e) DEFINITIONS.—In this section:

8 “(1) The term ‘covered position’ is—

9 “(A) a senior executive position; or

10 “(B) a position listed in section 7401(1) of  
11 this title that is not a senior executive position.

12 “(2) The term ‘covered service’ means, with re-  
13 spect to an individual subject to a removal or trans-  
14 fer from a covered position at the Department for  
15 performance or misconduct, the period of service be-  
16 ginning on the date that the Secretary determines  
17 that such individual engaged in activity that gave  
18 rise to such action and ending on the date that such  
19 individual is removed from the civil service or leaves  
20 employment at the Department prior to the issuance  
21 of a final decision with respect to such action, as the  
22 case may be.

23 “(3) The term ‘lump-sum credit’ has the mean-  
24 ing given such term in section 8331 or 8401 of title  
25 5, as the case may be.

1           “(4) The term ‘senior executive position’ has  
2           the meaning given such term in section 713(g) of  
3           this title.

4           “(5) The term ‘service’ has the meaning given  
5           such term in section 8331 or 8401 of title 5, as the  
6           case may be.”.

7           (b) APPLICATION.—Section 715 of such title, as  
8           added by subsection (a), shall apply to any action of re-  
9           moval or transfer from a covered position (as defined in  
10          subsection (e) of such section) at the Department of Vet-  
11          erans Affairs commencing on or after the date of the en-  
12          actment of this Act.

13          (c) CLERICAL AMENDMENT.—The table of sections  
14          at the beginning of such chapter is amended by adding  
15          at the end the following new item:

“715. Senior executives and section 7401(1) employees: reduction of benefits of  
individuals convicted of a felony.”.

16   **SEC. 3. LIMITATION ON ADMINISTRATIVE LEAVE FOR EM-**  
17                           **PLOYEES OF DEPARTMENT OF VETERANS AF-**  
18                           **FAIRS.**

19          (a) IN GENERAL.—Chapter 7 of title 38, United  
20          States Code, is further amended by adding at the end the  
21          following new section:

22   **“§ 717. Administrative leave limitation and report**

23          “(a) LIMITATION APPLICABLE TO EMPLOYEES  
24          WITHIN THE DEPARTMENT.—(1) The Secretary may not

1 place any covered individual on administrative leave for  
2 more than a total of 14 business days during any 365-  
3 day period.

4 “(2)(A) The Secretary may waive the limitation  
5 under paragraph (1) and extend the period of administra-  
6 tive leave of a covered individual if the Secretary submits  
7 to the Committee on Veterans’ Affairs of the Senate and  
8 the Committee on Veterans’ Affairs of the House of Rep-  
9 resentatives a detailed explanation of the reasons the cov-  
10 ered individual was placed on administrative leave and the  
11 reasons for the extension of such leave.

12 “(B) Such explanation shall include the position of  
13 the covered individual and the location where the covered  
14 individual is employed.

15 “(3) In this subsection, the term ‘covered individual’  
16 means an employee of the Department, including an em-  
17 ployee in a senior executive position (as defined in section  
18 713(g) of this title)—

19 “(A) who is subject to an investigation for pur-  
20 poses of determining whether such individual should  
21 be subject to any disciplinary action under this title  
22 or title 5; or

23 “(B) against whom any disciplinary action is  
24 proposed or initiated under this title or title 5.

1       “(b) REPORT ON ADMINISTRATIVE LEAVE.—(1) Not  
2 later than 30 days after the end of each fiscal year, the  
3 Secretary shall submit to the Committee on Veterans’ Af-  
4 fairs of the Senate and the Committee on Veterans’ Af-  
5 fairs of the House of Representatives a report listing the  
6 position of each employee of the Department (if any) who  
7 has been placed on administrative leave for a period longer  
8 than 14 business days during such fiscal year.

9       “(2) Each report submitted under paragraph (1)  
10 shall include, with respect to each employee listed in such  
11 report, the following:

12               “(A) The position occupied by the employee.

13               “(B) The number of business days of such  
14 leave.

15               “(C) The reason that such employee was placed  
16 on such leave.

17       “(3) In submitting each report under paragraph (1),  
18 the Secretary shall take such measures to protect the pri-  
19 vacy of the employees listed in the report as the Secretary  
20 considers appropriate.

21       “(c) ADMINISTRATIVE LEAVE DEFINED.—In this  
22 section, the term ‘administrative leave’—

23               “(1) means an administratively authorized ab-  
24 sence from duty without loss of pay or charge to  
25 leave for which the employee is placed due to an in-

1       vestigation on or for whom any disciplinary action is  
2       proposed or initiated; and

3               “(2) includes any type of paid non-duty status  
4       without a charge to leave.”.

5       (b) APPLICATION.—

6               (1) ADMINISTRATIVE LEAVE LIMITATION.—

7       Subsection (a) of section 717 of title 38, United  
8       States Code (as added by subsection (a)), shall apply  
9       to any period of administrative leave (as defined in  
10      such section) commencing on or after the date of the  
11      enactment of this Act.

12              (2) REPORT.—The report under section 717(b)  
13      of such title (as added by subsection (a)) shall apply  
14      beginning in the first quarter that ends after the  
15      date that is 180 days after the date of the enact-  
16      ment of this Act.

17      (c) CLERICAL AMENDMENT.—The table of sections  
18      at the beginning of chapter 7 of such title is further  
19      amended by adding at the end the following new item:

“717. Administrative leave limitation and report.”.

20   **SEC. 4. ACCOUNTABILITY OF LEADERS FOR MANAGING**  
21               **THE DEPARTMENT OF VETERANS AFFAIRS.**

22      (a) IN GENERAL.—Chapter 7 of title 38, United  
23      States Code, is amended by inserting after section 709 the  
24      following new section:



1   **“§ 710. Annual performance plan for political ap-**  
2                   **pointees**

3           “(a) IN GENERAL.—The Secretary shall conduct an  
4 annual performance plan for each political appointee of  
5 the Department that is similar to the annual performance  
6 plan conducted for an employee of the Department who  
7 is appointed as a career appointee (as that term is defined  
8 in section 3132(a)(4) of title 5) within the Senior Execu-  
9 tive Service at the Department.

10          “(b) ELEMENTS OF PLAN.—Each annual perform-  
11 ance plan conducted under subsection (a) with respect to  
12 a political appointee of the Department shall include, to  
13 the extent applicable, an assessment of whether the ap-  
14 pointee is meeting the following goals:

15               “(1) Recruiting, selecting, and retaining well-  
16 qualified individuals for employment at the Depart-  
17 ment.

18               “(2) Engaging and motivating employees.

19               “(3) Training and developing employees and  
20 preparing those employees for future leadership roles  
21 within the Department.

22               “(4) Holding each employee of the Department  
23 that is a manager accountable for addressing issues  
24 relating to performance, in particular issues relating  
25 to the performance of employees that report to the  
26 manager.”.

1 (b) CLERICAL AMENDMENT.—The table of sections  
 2 at the beginning of chapter 7 of such title is further  
 3 amended by inserting after the item relating to section  
 4 709 the following new item:

“710. Annual performance plan for political appointees.”.

5 **SEC. 5. ACCOUNTABILITY OF SUPERVISORS AT DEPART-**  
 6 **MENT OF VETERANS AFFAIRS FOR HIRING**  
 7 **WELL-QUALIFIED PEOPLE.**

8 (a) ASSESSMENT DURING PROBATIONARY PERIOD.—

9 (1) DETERMINATION REQUIRED.—With respect  
 10 to any employee of the Department of Veterans Af-  
 11 fairs who is required to serve a probationary period  
 12 in a position in the Department, the Secretary of  
 13 Veterans Affairs shall require the supervisor of such  
 14 employee to determine, during the 30-day period  
 15 ending on the date on which the probationary period  
 16 ends, whether the employee—

17 (A) has demonstrated successful perform-  
 18 ance; and

19 (B) should continue past the probationary  
 20 period.

21 (2) LIMITATION ON EMPLOYMENT AFTER PRO-  
 22 BATIONARY PERIOD.—

23 (A) IN GENERAL.—Except as provided in  
 24 subparagraph (B), no employee of the Depart-  
 25 ment serving a probationary period as described

1 in paragraph (1) may complete that proba-  
2 tionary period unless and until the supervisor of  
3 the employee, or another supervisor capable of  
4 making the requisite determination, has made  
5 an affirmative determination under such para-  
6 graph.

7 (B) PROBATIONARY PERIOD DEEMED COM-  
8 PLETED.—

9 (i) NO DETERMINATION.—If no deter-  
10 mination under paragraph (1) is made  
11 with respect to an employee before the end  
12 of the 60-day period following the end of  
13 the 30-day period specified in such para-  
14 graph, the employee shall be deemed to  
15 have completed the probationary period of  
16 the employee effective as of the end of that  
17 60-day period.

18 (ii) RETROACTIVE EFFECT OF DETER-  
19 MINATION.—If an affirmative determina-  
20 tion under paragraph (1) is made with re-  
21 spect to an employee after the end of the  
22 30-day period specified in such paragraph,  
23 the employee shall be deemed to have com-  
24 pleted the probationary period of the em-

1                    ployee effective as of the end of that 30-  
2                    day period.

3                    (3) NOTIFICATION TO CONGRESS REGARDING  
4                    DETERMINATIONS.—Not less frequently than month-  
5                    ly, the Secretary shall notify the Committee on Vet-  
6                    erans' Affairs of the Senate and the Committee on  
7                    Veterans' Affairs of the House of Representatives  
8                    regarding—

9                    (A) each instance during such month in  
10                   which a supervisor did not make a determina-  
11                   tion required under paragraph (1) during the  
12                   period required in such paragraph; and

13                   (B) each such instance included in a pre-  
14                   vious notification under this paragraph for  
15                   which the supervisor still has not made such a  
16                   determination.

17                   (b) SUPERVISORS.—With respect to any employee of  
18                   the Department who is serving a probationary period in  
19                   a supervisory position at the Department, successful per-  
20                   formance under subsection (a) shall include demonstrating  
21                   management competencies in addition to the technical  
22                   skills required for such position.

23                   (c) PERFORMANCE PLAN.—Each annual perform-  
24                   ance plan conducted for a supervisor of an employee serv-

1 ing a probationary period shall hold the supervisor ac-  
 2 countable for—

3 (1) providing regular feedback to such employee  
 4 during such period before making a determination  
 5 under subsection (a) regarding the probationary sta-  
 6 tus of such employee; and

7 (2) making a timely determination under sub-  
 8 section (a) regarding the probationary status of such  
 9 employee.

10 (d) SUPERVISOR DEFINED.—In this section, the term  
 11 “supervisor” has the meaning given such term in section  
 12 7103(a) of title 5, United States Code.

13 **SEC. 6. ACCOUNTABILITY OF MANAGERS FOR ADDRESSING**  
 14 **PERFORMANCE OF EMPLOYEES.**

15 The Secretary of Veterans Affairs shall ensure that,  
 16 as a part of the annual performance plan of an employee  
 17 of the Department of Veterans Affairs who is a manager,  
 18 the manager is evaluated on the following:

19 (1) Taking action to address poor performance  
 20 and misconduct among the employees that report to  
 21 the manager.

22 (2) Taking steps to improve or sustain high lev-  
 23 els of employee engagement.

1 **SEC. 7. EXPANSION OF DEFINITION OF PERSONNEL ACTION**  
 2 **TO INCLUDE PERFORMANCE EVALUATIONS**  
 3 **OF EMPLOYEES OF THE DEPARTMENT OF**  
 4 **VETERANS AFFAIRS.**

5 Section 2302(a)(2)(A)(viii) of title 5, United States  
 6 Code, is amended by inserting “or under title 38” after  
 7 “chapter 43 of this title”.

8 **SEC. 8. WRITTEN OPINION ON CERTAIN EMPLOYMENT RE-**  
 9 **STRICTIONS AFTER TERMINATING EMPLOY-**  
 10 **MENT WITH THE DEPARTMENT OF VETERANS**  
 11 **AFFAIRS.**

12 (a) IN GENERAL.—Chapter 7 of title 38, United  
 13 States Code, is further amended by adding at the end the  
 14 following new section:

15 **“§ 719. Written opinion on certain employment re-**  
 16 **strictions after terminating employment**  
 17 **with the Department**

18 “(a) IN GENERAL.—Before terminating employment  
 19 with the Department, any official of the Department who  
 20 has participated personally and substantially during the  
 21 one-year period ending on the date of the termination in  
 22 an acquisition by the Department that exceeds  
 23 \$10,000,000 shall obtain a written opinion from an appro-  
 24 priate ethics counselor at the Department regarding any  
 25 restrictions on activities that the official may undertake  
 26 on behalf of a covered contractor during the two-year pe-

1 riod beginning on the date on which the official terminates  
2 such employment.

3 “(b) COVERED CONTRACTOR DEFINED.—In this sec-  
4 tion, the term ‘covered contractor’ means a contractor car-  
5 rying out a contract entered into with the Department,  
6 including pursuant to a subcontract.”.

7 (b) CLERICAL AMENDMENT.—The table of sections  
8 at the beginning of chapter 7 of such title is further  
9 amended by inserting after the item relating to section  
10 717 the following new item:

“719. Written opinion on certain employment restrictions after leaving the De-  
partment.”.

11 **SEC. 9. REQUIREMENT FOR CONTRACTORS OF THE DE-**  
12 **PARTMENT EMPLOYING CERTAIN RECENTLY**  
13 **SEPARATED DEPARTMENT EMPLOYEES.**

14 (a) IN GENERAL.—Subchapter II of chapter 81 of  
15 title 38, United States Code, is amended by adding at the  
16 end the following new section:

17 **“§ 8129. Requirement for contractors employing cer-**  
18 **tain recently separated Department em-**  
19 **ployees**

20 “(a) IN GENERAL.—A covered contractor may not  
21 knowingly provide compensation to an individual described  
22 in subsection (b) during the two-year period beginning on  
23 the date on which the individual terminates employment

1 with the Department unless the covered contractor deter-  
 2 mines that the individual—

3 “(1) has obtained the written opinion required  
 4 under section 719(a) of this title; or

5 “(2) has requested such written opinion not  
 6 later than 30 days before receiving compensation  
 7 from the covered contractor.

8 “(b) INDIVIDUAL DESCRIBED.—An individual de-  
 9 scribed in this subsection is any official of the Department  
 10 who participated personally and substantially during the  
 11 one-year period ending on the date of the termination indi-  
 12 vidual’s employment with the Department in an acquisi-  
 13 tion by the Department that exceeds \$10,000,000.

14 “(c) COVERED CONTRACTOR DEFINED.—In this sec-  
 15 tion, the term ‘covered contractor’ means a contractor car-  
 16 rying out a contract entered into with the Department,  
 17 including pursuant to a subcontract.”.

18 (b) APPLICATION.—The requirement under section  
 19 8129(a) of title 38, United States Code, as added by sub-  
 20 section (a), shall apply with respect to any entity that en-  
 21 ters into a contract with the Department on or after the  
 22 date of the enactment of this Act.

23 (c) CLERICAL AMENDMENT.—The table of sections  
 24 at the beginning of chapter 81 of such title is amended



- 1 by inserting after the item relating to section 8128 the
- 2 following new item:

“8129. Requirement for contractors employing certain recently separated Department employees.”.

Passed the Senate December 10 (legislative day, December 9), 2016.

Attest:

*Secretary.*

114<sup>TH</sup> CONGRESS  
2<sup>D</sup> Session

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To amend title 38, United States Code, to improve the accountability of employees of the Department of Veterans Affairs, and for other purposes.